

C.H., Appellant

**DEPARTMENT OF VETERANS AFFAIRS,
JESSE BROWN VETERANS
ADMINISTRATION MEDICAL CENTER,
Chicago, IL, Employer**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

ORDER REMANDING CASE

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

On November 15, 2018 appellant filed a timely appeal from a September 20, 2018 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 19-0255.

This case has previously been before the Board.¹ By decision dated February 15, 2018,² the Board set aside OWCP's January 12 and March 2, 2017 decisions, which related to appellant's schedule award claim for permanent impairment of the right shoulder and remanded the case to OWCP for development of a consistent method for calculating permanent impairment for upper

¹ On September 24, 2014 appellant, then a 35-year-old medical instrument technician, filed a traumatic injury claim (Form CA-1) alleging that, on that date, she aggravated or pulled muscles/tendons from her right hand up to her neck while she was repositioning and resetting a hemodialysis unit while in the performance of duty. She stopped work on the date of injury. OWCP assigned this claim OWCP File No. xxxxxx471. By decision dated November 18, 2015, it accepted her claim for unspecified right shoulder joint sprain.

² Docket No. 17-1439 (issued February 15, 2018).

extremities to be applied uniformly followed by a *de novo* decision on appellant's claim for an upper extremity schedule award claim.³

In a letter dated August 13, 2018, OWCP requested that the employing establishment provide pay rate information effective June 10, 2016, the date appellant last worked, including any premium pay earned and specifying the type and amount. The employing establishment did not respond to OWCP's request for pay rate information.

By decision dated September 20, 2018, OWCP granted appellant a schedule award for an additional six percent permanent impairment of the right upper extremity. The period of the award was for 18.72 weeks and ran from August 15 to December 24, 2017. OWCP determined the effective date of pay rate to be September 24, 2014. It used a basic weekly pay rate of \$935.72 and a basic compensation rate of 66 2/3 percent for a weekly compensation rate of \$623.82.

The Board finds that the proper weekly compensation rate calculation requires further development. Monthly pay for compensation purposes means the monthly pay at the time of injury, or the monthly pay at the time disability begins, or the monthly pay at the time compensable disability recurs, whichever is greater.⁴ Under OWCP's procedures, elements in pay rate include Sunday premium, night differential, and hazard pay.⁵ Although OWCP requested additional pay rate information by letter dated August 13, 2018, to which the employing establishment did not respond, the Board finds that an additional request must be made to ascertain the appropriate compensation rate.

Once OWCP undertakes development of the record, it must do a complete job in procuring evidence that will resolve the relevant issues in the case.⁶ It is well established that proceedings under FECA are not adversarial in nature and that, while the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. OWCP has an obligation to see that justice is done.⁷ In a case where OWCP "proceeds to develop the evidence and to procure evidence, it must do so in a fair and impartial manner."⁸ The employing establishment has not submitted the requested evidence regarding

³ Appellant received a schedule award under OWCP File No. xxxxxx866 for bilateral carpal tunnel syndrome with the period of the award from September 21, 2014 to September 5, 2015 and it was paid at the augmented compensation rate of 75 percent. OWCP found that she had an eight percent permanent impairment of the right upper extremity and an eight percent permanent impairment of the left upper extremity due to the accepted bilateral carpal tunnel syndrome.

⁴ 5 U.S.C. § 8101(4); 20 C.F.R. § 10.5(s); *R.M.*, Docket No. 17-1759 (issued July 6, 2018); *Samuel C. Miller*, 55 ECAB 119 (2003).

⁵ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Determining Pay Rates*, Chapter 2.900.7a(2) (March 2011); *G.J.*, Docket No. 18-1292 (issued March 13, 2019); see also *L.G.*, Docket No. 17-0699 (issued August 9, 2018).

⁶ *C.F.*, Docket No. 18-1607 (issued March 12, 2019); *L.B.*, Docket No. 15-0905 (issued September 19, 2016); *Richard F. Williams*, 55 ECAB 343 (2004).

⁷ *D.H.*, Docket No. 18-1410 (issued March 21, 2019); *William J. Cantrell*, 34 ECAB 1233 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

⁸ *S.L.* Docket No. 17-1780 (issued March 14, 2018); *Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985).

appellant's pay rate. The type of information being sought is normally within the custody of the employing establishment and not readily available to appellant.⁹

On remand, OWCP should again request that the employing establishment provide information regarding appellant's pay rate, including any premium pay earned, on the relevant dates of injury, disability, and recurrence of disability. It shall thereafter determine which date provides the greater pay rate. After this and such other development as OWCP deems necessary, it shall issue a *de novo* decision.

IT IS HEREBY ORDERED THAT the September 20, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: September 3, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

⁹ See *M.P.* Docket No. 17-1736 (issued February 14, 2018); *F.V.*, Docket No. 16-0786 (issued August 2, 2016). See also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Determining Pay Rates*, Chapter 2.900.2(d) (sets forth OWCP procedures for clarifying pay rate discrepancies); *Gary Vancura*, 40 ECAB 427 (1989) (where Board remanded the case for OWCP to obtain a confirmation from the employing establishment to explain a discrepancy in appellant's pay rate).